

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Oscar Cruz, Mynor Polanco and Carlos Vasquez,)	
individually and on behalf of all others similarly situated,)	Case No. 2:23-cv-9200
)	(GRB)(ARL)
Plaintiff(s),)	[PROPOSED] SO-
)	ORDERED STIPULATION
<i>-against-</i>)	REGARDING
)	CONDITIONAL
Demarco Bros Landscaping & Tree Service Corp d/b/a)	CERTIFICATION UNDER
Frank Giovinazzo Tree Service d/b/a Frank Giovinazzo)	29 USC §216 (b)
North Shore Tree Service d/b/a North Shore Tree)	
Service, and Theodore Passelis,)	
)	
Defendant(s).)	

Counsel for the respective parties have entered into this Stipulation to memorialize the Parties' agreement for conditional certification of this action as a collective action under Section 216(b) of the Fair Labor Standards Act ("FLSA"). The Parties respectfully seek the Court's approval of this Stipulation.

WHEREAS, the Plaintiff(s) commenced this action on December 15, 2023 individually and on behalf of all individuals who performed work for Demarco Bros Landscaping & Tree Service Corp d/b/a Frank Giovinazzo Tree Service d/b/a Frank Giovinazzo North Shore Tree Service d/b/a North Shore Tree Service ("Corporate Defendant"), at any time during the two year period preceding the filing of the complaint.

WHEREAS, the Defendant(s) answered the complaint on January 25, 2024 denying liability under the FLSA;

WHEREAS, the Plaintiff(s) intend on filing a motion for conditional certification; and

WHEREAS, the parties wish to preserve resources and avoid motion practice;

NOW THEREFORE,

1. The parties consent to conditional certification of this matter as a collective action under § 216(b).

2. Defendants' consent is made without prejudice to their right later to argue that Plaintiffs and any opt-in Plaintiffs are not "similarly situated" under applicable law. Defendants do not, by consenting to Plaintiffs' motion, admit that Plaintiffs or any opt-in Plaintiffs are "similarly situated."

3. The Opt-In Class consists of all individuals who performed work for Corporate Defendant at any time during the two year period prior to the filing of the complaint.

4. By agreeing to this class period for notice purposes, Defendants are not waiving their right to assert any available defenses, including but not limited to the defense that they are not liable for all or part of any alleged damages due to the applicable statute of limitations.

5. Within thirty (30) days after the Court enters the Consent Order granting conditional certification, Defendants will provide Plaintiffs' Counsel with a computer-readable list of current and former employees as described by Paragraph 3, together with their last known address, last known telephone numbers, date of birth, beginning and (with respect to former workers) ending date of work (the "Opt-In List"), all to the extent available and maintained by Defendants. This information will be considered confidential and shall not be used for any purpose other than to locate Opt-In class members.

6. Within ten (10) business days after receiving the Opt-In List described in Paragraph 5, Plaintiffs' Counsel will send notice in the form attached as Exhibit A, in both English and Spanish via first class mail to each individual on the Opt-In List. Notwithstanding the foregoing though, the parties will work in concert to agree on the final Spanish translation of the underlying notice prior to service on the individuals listed in the Opt-In List.

7. The "opt-in" period will be 30 days. Thus, the opt-in period will close at 11:59 P.M. on the 30th day (including the day of the mailing) after the first notice is mailed. Plaintiff may seek leave of the court for an extension of the "opt-in" period for good cause.

8. The Defendants reserve all rights to make any available motions under the law, including motions for summary judgment and/or motions for de-certification of this Collective Action at the conclusion of discovery.

Dated: April 11, 2024

MOSER LAW FIRM, P.C.

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Dated: April 11, 2024

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Attorneys for Defendant(s)

SO ORDERED:

Arlene R. Lindsay, USMJ